

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2428
)	EEOC NO.: 21BA81351
FRANSHON GASTON)	ALS NO.: 09-0721
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Franshon Gaston's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2008CF2428; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On March 10, 2008, the Petitioner filed a charge of discrimination with the Respondent, amended June 24, 2008. The Petitioner alleged that Aunt Martha's Youth Service Center, Inc. ("Employer") discharged her because of her race, Black (Count A) and sex, female (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 9, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 14, 2009, the Petitioner timely filed her Request.
2. The Employer is a not-for-profit social service agency which provides community-based services to disadvantaged children, youths and young adults, who will be referred to herein as the Employer's "clients" On May 29, 2006, the Employer hired the Petitioner as a Family Educator.
3. On September 9, 2007, the Petitioner was alleged to have been involved in an altercation with one of the Employer's female clients.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. On September 10, 2007, the Employer conducted an investigation into the September 9th incident. The Employer interviewed the female client and several witnesses to the alleged altercation. The Employer also met with the Petitioner.
5. On September 13, 2007, the Employer again met with the Petitioner regarding the incident.
6. On September 20, 2007, the Employer sent the Petitioner a Notice of Termination, stating the Petitioner was terminated effective as of September 10, 2007. The Employer stated it discharged the Petitioner because the Petitioner's conduct on September 9, 2007, violated the Employer's Behavior Treatment Plan for Residential Facilities policy.
7. On October 15, 2007, the Employer hired a Black female to replace the Petitioner.
8. In her charge, the Petitioner alleged the Employer discharged her on September 10, 2007, because of her race, Black, and her sex, female.
9. In her Request, the Petitioner argues that the Employer admitted to needing more males to control the Employer's facility and that a male took over her shift after she was discharged. The Petitioner further argues that the Employer continues to discharge its Black employees.
10. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues that the Employer articulated a non-discriminatory reason for discharging the Petitioner, and there was no substantial evidence this articulated reason was a mere pretext for race or sex discrimination.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

As to Counts A and B, the Commission finds a lack of substantial evidence that the Employer discharged the Petitioner based on her race and sex. Most devastating to the Petitioner's charge that the Employer's adverse action against the Petitioner was motivated by her race (Black) and sex (female) is the fact that the Employer hired a Black female to replace the Petitioner after her termination from employment.

Further, there is no evidence from which the Commission could conclude that the Employer's articulated reason for discharging the Petitioner was a mere pretext for unlawful discrimination. The

In the Matter of the Request for Review by: Franshon Gaston

Employer conducted an investigation into the September 9, 2007 incident, which consisted of interviewing the Petitioner and several other witnesses. There is no substantial evidence that the Employer lacked a good faith belief that the Petitioner had violated its policy when it discharged her on September 20, 2007, following its investigation.

Although the Petitioner denies having violated the Employer's policy on September 9, 2007, the Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness is not important as long as there was a good faith belief by the Employer in its decision. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May 6 1996), *citing* Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Aunt Martha's Youth Service Center, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 23rd day of June 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini